

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7156

Petition of UPC Vermont Wind, LLC, for a Certificate of)
Public Good, pursuant to 30 V.S.A. § 248, authorizing the)
construction and operation of a 52 MW wind electric)
generation facility, consisting of 26 wind turbines, and)
associated transmission and interconnection facilities, in)
Sheffield and Sutton, Vermont)

Order entered: 4/27/2006

ORDER RE MOTIONS TO INTERVENE

Today's Order addresses six intervention requests that were filed with the Public Service Board ("Board") in this Docket. Motions to intervene were filed in this Docket by Vincent and Frank Illuzzi on March 15, 2006; the Town of Sheffield ("Sheffield") on March 17, 2006; the Town of Lyndon ("Lyndon") on April 13, 2006; Universal Health Services, Inc. and UHS of Sutton, Inc. (collectively "UHS") on April 14, 2006; Ridge Protectors, Inc. ("RPI") on April 14, 2006; and the Town of Sutton ("Sutton") on April 17, 2006.

The only parties to respond to these motions to intervene were the Department of Public Service ("Department"), and UPC Vermont Wind, LLC ("UPC"), although UPC did not respond to all of the intervention requests, and in some instances, provided comments beyond the seven-calendar-day deadline established by the schedule in this Docket. The Board is troubled that UPC, for whom several lawyers have filed notices of appearance, filed responses to some intervention requests beyond the deadline for such responses. The Board expects that future submittals in this Docket, by all parties, will be filed in a timely manner.

Sheffield

Sheffield's motion simply states that twenty of the proposed turbines will be located within its borders and "[c]onsequently, they have a substantial interest in all aspects of the case." Sheffield further states that Section 248 "requires service of the Petition on the Town Selectboard and Planning Commission."

On March 17, 2006, the Department filed a letter contending that Sheffield's motion was "substantially deficient" in that it did not address the requirements of Board Rule 2.209(A)(3). However, the Department further states that Sheffield "would be entitled to intervene in the proceeding in spite of the deficiencies in the motion" but should be required to specifically identify the interests it seeks to protect. No other party filed comments on Sheffield's motion.

Sheffield is granted permissive intervention pursuant to Board Rule 2.209(B). Due to the deficiencies of its motion, we are allowing Sheffield to participate only on the issue of orderly development. Sheffield may file additional information by the May 9 deadline to support its participation on additional issues. Parties will then have an opportunity to respond to this additional information.

Lyndon

Lyndon's motion contends that "[t]he intrusion of 26 +/- wind towers, twenty of which may be seen from points in the Town of Lyndon, present an unacceptable aesthetic alteration [on view sheds] and a direct reduction in property values." Lyndon further questions whether the proposed project will have a negative economic impact on the region, "namely the travel and tourism industry and the resulting state and local revenues reductions."

On April 10, 2006, the Department filed a letter stating that it has no objection to the Board granting Lyndon permissive intervention "on the issues of aesthetics and economic benefits as described by the town's motion." On April 13, 2006, UPC filed a response to Lyndon's intervention request. UPC indicates that, while it does not oppose Lyndon's request, the Board should consider the fact that the proposed turbines are not located within Lyndon. UPC recommends that Lyndon's participation in this Docket "be directly related and limited to those claimed impacts under section 248(b)(1) (orderly development of the region) and 248(b)(4) (economic benefit of the project)."

Lyndon is granted permissive intervention in this Docket, pursuant to Board Rule 2.209(B). Lyndon's participation is limited to addressing issues related to orderly development, aesthetics, and economic impact; the only issues for which it has made an adequate showing.

Vincent and Frank Illuzzi

The Illuzzis' intervention request states that they are adjoining landowners in Sheffield and have "a direct interest in the aesthetics and economics of the proposed development and in its construction plans and the execution of those plans." Further, the Illuzzis assert that they believe they "can add a useful perspective on the state's need for this kind of power." The motion ends with the request that the Illuzzis "be given party status for all purposes."

On April 11, 2006, the Department filed a letter stating that "[i]t appears that the Illuzzis have an interest that would support intervention in the proceeding," but expresses some concerns with the Illuzzis' motion. In particular, the Department contends that the motion is overly broad and does not provide the qualifications that the Illuzzis possess to participate as expert witnesses on the subject of "the state's need for this kind of power." The Department recommends that the Board defer ruling on the motion and request that the Illuzzis provide additional information to support their motion. No other party filed comments on the Illuzzis' intervention request.

We find that there is sufficient information at this time to grant the Illuzzis permissive intervention, pursuant to Board Rule 2.209(B). However, the extent of their participation will be limited to addressing the issue of aesthetics because, at this time, the Illuzzis have not provided sufficient information to support their participation on any other issue. We will allow the Illuzzis an opportunity to provide supplemental information, by the May 9, 2006, intervention deadline, to support their participation on additional issues. Parties will have the opportunity to respond to this additional information.

UHS

UHS owns and operates the King George School in Sutton, which is a coeducational boarding school that provides a non-traditional environment for its students. UHS asserts that "UPC has asserted the right to use in an unrestricted fashion a limited private right of way granted by UHS's predecessor in interest" to access much of the proposed project. UHS contends that, as a property rights dispute regarding the right-of-way has not been resolved, it has a substantial property interest in the outcome of the proceeding. Additionally, as the Board may

provide conditions that affect the use of the disputed right-of-way, such as construction access and traffic, UHS is a necessary party to the case.

UHS further contends that "the disruption that will be caused by the construction and operation of the industrial wind farm will disturb its carefully cultivated educational environment and may necessitate that it close its doors." Finally, UHS contends that the proposed project through potential environmental and aesthetic impacts, could disrupt the educational experience of its students, the school's water supply, and "the rural and natural character of the school's setting." UHS asserts that its interests include: the orderly development of the region (Section 248(b)(1)); the need for and/or cost effectiveness of the project (Section 248(b)(2)); the impact of wind generation on system reliability (Section 248(b)(3)); the economic impact of the project (Section 248(b)(4)); aesthetics and other environmental issues (Section 248(b)(5); the relationship of the project to the relevant least-cost integrated plan (Section 248(b)(6); and impact on outstanding resource waters (Section 248(b)(8)).

On April 17, 2006, the Department filed a letter with the Board indicating that it does not oppose the Board granting permissive intervention to UHS generally. However, the Department contends that UHS has not provided a basis for intervention on the issues of the need for and/or cost-effectiveness of the project under Section 248(b)(2), the impact of wind generation on system reliability under Section 248(b)(3), and the relationship of the project to the relevant least-cost integrated plan under Section 248(b)(6). Further, the Department recommends that the Board remind UHS, and other potential intervenors, that testimony on technical issues "must be presented by qualified witnesses capable of explaining and defending their positions"

On April 24, 2006, UPC filed a letter with the Board objecting to UHS's intervention request. UPC claims that UHS "has not, and cannot, identify an interest of the type that would support intervention as of right in these proceedings." With respect to UHS's claim of intervention as of right, UPC cites to Vermont Supreme Court precedent for the proposition that:

proceedings under 30 V.S.A. § 248 relate only to the issue of public good, not the interests of private landowners who are or may be involved. . . . Individual property rights not being at issue, they are not a basis for any special recognition

of the property owners, nor do they support any special consideration for their protection in these proceedings.¹

UPC contends that any dispute regarding the right-of-way is irrelevant with respect to the issues that must be considered under Section 248.

UPC further contends that "UHS' Motion is unsupported by affidavits and fails to offer specific evidence of interests that would justify intervention." As an example, UPC contends that the noise impacts claimed by UHS are "directly contradicted by the evidence currently before the Board" and that "UHS provides no evidence to the contrary." UPC asserts that UHS has failed to demonstrate any interest in the following criteria of Section 248(b): orderly development, need, system stability and reliability, economic benefit, and least-cost integrated planning.

Finally, UPC contends that UHS has not made a sufficient showing that any interests that it might have in any of the issues listed in Section 248(b) are not adequately protected by the Department and the Agency of Natural Resources ("ANR").

We find unconvincing UPC's claim that UHS's motion is deficient because there are not affidavits supporting UHS's claims. The Board's rules do not require such affidavits and UPC has not articulated a sufficient basis for requiring affidavits in these particular circumstances.

Nor are we persuaded by UPC's argument that the Department and ANR already represent UHS's interests. Instead, we conclude that UHS, as an adjoining property owner, may provide a perspective that is sufficiently distinct from those of ANR and the Department to support permissive intervention by UHS. We grant UHS permissive intervention pursuant to Board Rule 2.209(B).²

We agree with the Department that UHS has not provided sufficient information to allow UHS to participate on issues related to need, system stability, and relevant least-cost integrated plans. Accordingly, UHS's participation is limited to issues related to Section 248(b)(1) orderly development, Section 248(b)(4) economic impact, and Section 248(b)(5) aesthetics and other environmental issues.

1. *Vermont Elec. Power Co., Inc. v. Bandel*, 135 Vt 141, 145 (1977).

2. There is no meaningful distinction between the rights of a party that has been granted permissive intervention and the rights of a party that is granted intervention as of right. Because we have granted UHS permissive intervention, there is no need to address the question of whether UHS should be granted intervention as of right.

RPI

RPI is "a citizens-action group established in 2005 . . . to review the Sheffield/Sutton industrial wind project proposed by UPC and to raise awareness of what the impact of such a project would be on Vermont's Northeast Kingdom." RPI states that its members include small-business owners and employees concerned with the economic impact of the proposed project. In particular, RPI is concerned that the proposed project will alter the rural and natural character of the area. RPI states that one of its principal purposes is to "protect Vermont's ridgelines in perpetuity from industrial or commercial development that would threaten high-mountain ecosystems." RPI asserts that its interests include: the orderly development of the region (Section 248(b)(1)); the need for and/or cost effectiveness of the project (Section 248(b)(2)); the impact of wind generation on system reliability (Section 248(b)(3)); the economic impact of the project (Section 248(b)(4)); aesthetics and other environmental issues (Section 248(b)(5); the relationship of the project to the relevant least-cost integrated plan (Section 248(b)(6); and impact on outstanding resource waters (Section 248(b)(8)).

On April 17, 2006, the Department filed a letter with the Board stating that it does not oppose the permissive intervention of RPI generally, but requests that the Board remind RPI that any witness who addresses technical issues must have sufficient qualifications.

On April 24, 2006, UPC filed a letter objecting to RPI's motion. UPC claims that "RPI has not identified a substantial interest with sufficient specificity to support intervention." UPC also contends that "the majority of hypothetical injuries that RPI's members are alleged to suffer fall outside the organization's specific purpose, and therefore cannot be raised by RPI. In particular, UPC claims that RPI cannot address economic issues because RPI's articles of incorporation do not specifically state that this is one of its purposes.

UPC contends that RPI has "failed to adequately document an organizational interest in" the issues of orderly development, need, system stability and reliability, economic benefit, and least-cost integrated planning. Further, UPC contends that "to the extent that RPI does have any interest in the criteria it identifies, other parties in the proceeding [such as the Department and ANR] will adequately protect RPI's alleged interests."

RPI's purpose, according to the articles of incorporation included with UPC's comments, is to "protect these ridgelines in perpetuity from industrial or commercial development that would threaten high-mountain ecosystems or create undue adverse aesthetic impacts." We conclude that the purpose of "protect[ing] ridgelines in perpetuity from industrial or commercial development" encompasses the economic impact of the proposed project and the project's impacts on the orderly development of the region. With respect to UPC's argument that ANR and the Department adequately protect RPI's interests, we conclude that RPI, as an organization formed specifically to address commercial wind generation, may provide a perspective that is sufficiently distinct from those of ANR and the Department to support permissive intervention by RPI.

For these reasons, RPI is granted permissive intervention pursuant to Board Rule 2.209(B). We agree with UPC that RPI has not provided sufficient information to allow RPI to participate on issues related to need, system stability and reliability, and relevant least-cost integrated plans. RPI's participation is limited to the following issues: the orderly development of the region, the economic impact of the project, aesthetics and other environmental issues, and impact on outstanding resource waters.

Sutton

Sutton's motion requests that it be allowed to intervene as of right in that Sutton has stated that the proposed project would interfere with the orderly development of the town and conflicts with the Sutton Town Plan. Sutton contends that Section 248(b)(1), by requiring due consideration of the recommendations of municipal planning and legislative bodies and land conservation measures contained in any affected town plans, confers a statutory right on Sutton to intervene.

On April 17, 2006, the Department filed a letter stating that it does not oppose the permissive intervention of Sutton "for the interests identified in the motion." The Department also "recommends that the Board request clarification as to the qualifications of Mr. Robert Pforzheimer to act in the capacity of representative for the town."

On April 24, 2006, UPC filed a letter with the Board stating that it does not oppose Sutton's right to intervene, but does not believe that Sutton has demonstrated that it should be granted intervention as of right. Further, UPC states that the Board should grant party status to the Sutton Planning Board rather than the Town of Sutton as the motion is signed by Robert Michaud, the Chair of the Planning Board, and does not indicate that the Selectboard has authorized the Planning Board Chair to speak for the Selectboard.

We grant Sutton permissive intervention pursuant to Board Rule 2.209(B). However, we reject Sutton's argument that Section 248(b)(1) confers upon the town a statutory right to appear as a party in this case. The statute requires that we give due consideration to the town plan and the recommendations of the municipal planning commission and legislative body. Sutton does not need to participate in these proceedings in order for the Board to give due consideration to the town plan. Further, Section 248(f) provides a mechanism by which Sutton could provide recommendations regarding the proposed project.

UPC and the Department have correctly identified a technical problem with Sutton's motion. Board Rule 2.201(B) governs the appearance of pro se representatives in cases before the Board. The rule provides:

In its discretion, the Board may permit persons who are not attorneys to appear before it as follows: a partnership may be represented by a partner, and a corporation, cooperative or association may be represented by an officer thereof or by an employee designated in writing by an officer thereof. . . . any individual may be a pro se representative in his or her own cause.

Although the rule does not specifically address municipal governments, the same principle would apply. If the Sutton Selectboard is a party to this case, only a member of the Selectboard, or a person expressly appointed by the Selectboard, may appear for the Selectboard.

The motion does not sufficiently explain whether the Chair of the Planning Board is authorized to represent the Selectboard. Sutton must provide a letter from the Selectboard specifying who is authorized to appear for it in these proceedings.

The only issue identified by Sutton in its intervention request is orderly development. Consequently, its participation is limited to that issue.

SO ORDERED.

Dated at Montpelier, Vermont, this 27th day of April, 2006.

<u>s/James Volz</u>)	
)	PUBLIC SERVICE
)	
<u>s/David C. Coen</u>)	BOARD
)	
)	OF VERMONT
<u>s/John D. Burke</u>)	

OFFICE OF THE CLERK

FILED: April 27, 2006

ATTEST: s/Judith C. Whitney
Deputy Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: Clerk@psb.state.vt.us)